

PUBLIC
DIRECT TESTIMONY
OF

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Illinois Commerce Commission

Northern Illinois Gas Company
d/b/a Nicor Gas Company

Petition for an order re-approving an agreement for the provision of facilities and services and the transfer of assets between Nicor Gas Company and Nicor Inc. and its subsidiaries

Docket No. 09-0301

March 15, 2010

Confidential Marked With **

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1 **I. Witness Qualifications**

2 **Q. State your name and business address.**

3 A. David A. Sackett, Illinois Commerce Commission, 527 East Capitol Avenue,
4 Springfield, Illinois, 62701.

5

6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed as an Economic Analyst in the Policy Program of the Energy
8 Division of the Illinois Commerce Commission (“Commission” or “ICC”).

9

10 **Q. What are your responsibilities within the Energy Division – Policy**
11 **Program?**

12 A. I provide economic analysis and advise the Commission and other staff members
13 on issues involving the natural gas and electric utility industries. I review tariff
14 filings and make recommendations to the Commission concerning those filings. I
15 provide testimony in Commission proceedings. In selected cases, I may be
16 called upon to act as an assistant to Commissioners or to administrative law
17 judges.

18

19 **Q. State your educational background.**

20 A. I graduated from Kankakee Community College with an Associate of Science
21 degree in Arts and Sciences in 1998. I graduated with highest honors from
22 Illinois State University with a Bachelor of Science degree in Economics and
23 History in 2000. I obtained a Master of Science degree in Applied Economics

from Illinois State University in the Electric, Natural Gas and Telecommunications Economics sequence¹ in 2002. I also completed an internship at the Commission in the Energy Division in 2001.

Q. Describe your professional experience.

A. Since July 2007, I have been an Economic Analyst in the Policy Program of the Commission's Energy Division. While employed by the Commission, I have participated in several docketed proceedings before the Commission; I have provided expert testimony in Docket Nos. 07-0585 through 07-0590 (Cons.) (2007 Ameren Illinois Utilities gas and electric rate proceedings), Docket No. 08-0363 (Northern Illinois Gas Company d/b/a Nicor Gas Company rate proceeding), Docket Nos. 09-0166 through 09-0167 (Cons.) (North Shore Gas Company and The Peoples Gas Light and Coke Company rate proceedings), and Docket Nos. 09-0306 through 09-0311 (Cons.) (2009 Ameren Illinois Utilities gas and electric rate proceedings). I was an instructor at Illinois State University from 2003 to 2006, where I taught various courses in economics and statistics to undergraduate students. I am a Captain in the Marine Corps Reserve having served since 1993; I have completed two deployments to Iraq.

¹ "The Electricity, Natural Gas, and Telecommunications Sequence is a structured program that combines training in basic economic theory and statistical methods with specialized training in the theory, history and institutions of the economics of regulation." ISU website: <http://www.econ.ilstu.edu/grad/program.htm>.

II. Purpose of Testimony and Background Information

Q. What is the subject matter of your direct testimony?

A. Pursuant to the Final Order in its late rate case in Docket No. 08-0363, Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor Gas" or "Company") was ordered by the Commission to file a petition seeking either re-approval of its existing Operating Agreement ("OA") or approval of a new affiliated interest transaction agreement that governs the provision of facilities and services and the transfer of assets between Nicor Gas Company and Nicor Inc. and its subsidiaries. Nicor Gas proposed no changes to its OA in its Petition. However, in the previous rate case Staff raised several significant issues with the OA that led to this docket.

My testimony responds to the testimony of Nicor Gas witness Gerald P. O'Connor and raises concerns regarding the OA as it pertains to the Gas Line Comfort Guard ("GLCG") program offered by Nicor Services, other products offered by Nicor Gas affiliates, Nicor Gas' call center, website hosting, and the third party billing service that Nicor Gas offers to parties offering products to its customers.

Q. Do you have any attachments to your testimony?

A. Yes. I have attached the following to my testimony.

65

Letter	Source	Docket No.
A	Nicor Gas response to Staff DR DLH 11.01 Exhibit 1	09-0301
B	GLCG Terms and Conditions	09-0301
Conf. C	Nicor Gas confidential response to Staff DR DLH 2.02 Exhibit 11 pp. 1-4, 12, 15-18	09-0301
Conf. D	Nicor Gas confidential response to Staff DR DLH 2.02 Exhibit 13 pp. 1-4, 41-56	09-0301
E	Nicor Gas response to IGS DR IGS 2.35 Attachment 2	08-0363
F	Nicor Gas response to Staff DR DAS 2.06 Exhibit 1	09-0301
G	Nicor Gas response to Staff DR DAS 4.03 Exhibit 1	09-0301
H	Nicor Gas response to Staff DR DAS 1.15 Exhibit 2	09-0301
I	Nicor Gas response to Staff DR DAS 3.03 Exhibit 2	09-0301
J	Nicor Gas response to Staff DR DAS 3.01 Exhibit 4	09-0301
K	Nicor Gas response to Staff DR DAS 2.14 Exhibit 1	09-0301
L	Nicor Gas response to Staff DR DAS 2.14 Exhibit 3	09-0301
M	Nicor Gas response to Staff DR DAS 2.14 Exhibit 6	09-0301
N	Nicor Gas response to Staff DR DAS 2.14 Exhibit 9	09-0301
O	Nicor Gas response to Staff DR DAS 1.12	09-0301
P	Nicor Gas response to Staff DR DAS 2.02	09-0301
Q	Nicor Gas response to Staff DR DAS 2.05a	09-0301

Figure 1 - List of Attachments

66

67

68 **Q. What issues were raised by Staff in Nicor Gas' last rate case, Docket No.**
69 **08-0363?**

70 A. Staff witness Dianna Hathhorn objected to certain cost methodologies of the OA,
71 including the extent of the third party billing service. (Docket No. 08-0363, Staff
72 Ex. 15.0, pp. 18-22) Additionally, I provided testimony on Nicor Services' GLCG
73 program, Nicor Gas' call center, and website hosting. I testified that Nicor Gas'
74 affiliates receive an unfair competitive advantage relative to other suppliers in the
75 provision of its products. (Docket No. 08-0363, Staff Ex. 24.0R2, pp. 47-52)

76

77 **Q. Did Nicor Gas agree to discuss these issues in a separate docket?**

78 A. Yes. (Docket No. 08-0363, Nicor Reply Brief, p. 128)

79

80 **Q. What did the Commission require with regard to these issues?**

81 A. The Commission required that Nicor Gas present in a new docket its OA for re-
82 approval or change it as Nicor Gas deemed necessary. In the instant docket,
83 Nicor Gas was to provide testimony addressing the concerns that Staff raised in
84 Docket No. 08-0363:

85 Nicor shall file a petition within 120 days of the date of a final Order
86 in this proceeding seeking either re-approval of its current
87 Operating Agreement, or, approval of a new affiliated interest
88 transaction agreement; this petition shall address the criteria
89 expressed by Staff, as is set forth in section XIV(C) 1 herein; and, it
90 shall be supported by verified testimony.
91 (Order, Docket No. 08-0363, March 25, 2009, p. 185)

92

93 **Q. Did Nicor Gas provide the OA and testimony as directed?**

94 A. Yes. Nicor Gas provided the required testimony but did not make any changes
95 to its OA. (Nicor Gas Exhibits 1.0, pp. 2 and 4)

96

97 **III. Summary of Recommendations**

98 **Q. Please summarize your recommendations.**

99 A. I have the following recommendations for the Commission:

100 **Recommendation 1:** Change Nicor Gas' OA to require Commission approval of
101 any sub-agreement *prior* to it becoming effective.

102 **Recommendation 2:** Change Nicor Gas' OA to preclude customer solicitation.

103 **Recommendation 3:** Require Nicor Gas' to provide factual information regarding
104 its currently available repair services.

Recommendation 4: Change Nicor Gas' OA to preclude operational services other than those specifically authorized.

Recommendation 5: Change Nicor Gas' OA to require that any Nicor Gas' service, excluding "corporate support," that supports any affiliate product that is offered to Nicor Gas customers be provided to non-affiliates on a non-discriminatory basis.

Recommendation 6: Change Nicor Gas' OA to preclude website hosting of Nicor Gas by any affiliate.

Recommendation 7: Require Nicor Gas to charge any affiliate the same charge as other third parties under the Third Party Billing Service.

IV. Operating Agreement Structure

Description

Q. Please describe Nicor Gas' OA with Nicor Inc. and its affiliates.

A. Interactions between Nicor Gas and Nicor Inc. and its affiliates are governed by the OA. While the OA should indicate with specificity the services that may be provided between the affiliates and establish the pricing mechanism to charge for these services, the OA is an "umbrella-type" agreement where the general agreement has been approved by the Commission to be in the public interest and subsequently, sub-agreements are also assumed to be in the public interest provided that they fall within the confines of the general agreement. General guidelines are provided in the OA under which Nicor Gas enters into certain sub-agreements with its affiliates. While the original agreement and any

amendments are reviewed and approved by the Commission, the sub-
agreements are *neither* reviewed by the Commission *nor* submitted to the
Commission for approval.

**Q. What laws and administrative rules govern the interaction between
affiliates of natural gas utilities in Illinois?**

A. There are several laws and administrative rules that govern the interaction that a
utility can have with an affiliate. Those laws and administrative rules of particular
interest in this docket include Sections 7–101 and 7–208 of the Public Utilities
Act (“Act”) and Part 550, Non Discrimination in Affiliate Transactions for Gas
Utilities of Title 83 of the Illinois Administrative Code (“Code”).

Q. In your non legal opinion, what are the legal categories of affiliates?

A. Specifically, affiliates of gas utilities can be categorized as “affiliated interests,”
“affiliated interests in competition with ARGS,” and “HVAC affiliates.” “Affiliated
interests” are defined in Section 7–201 of the Act. With regard to “affiliated
interests in competition with ARGS,” according to Section 550.10 of the Code,

**Affiliated interests in competition with alternative retail gas
suppliers** [“ARGS”] shall include affiliated alternative retail gas
suppliers that provide services to customers within the service
territory of the gas utility with which it is affiliated, as well as
affiliated interests that broker, sell, or market gas to customers
within the service territory of the gas utility with which it is affiliated,
or that provide consulting services directly related to the sale of gas
to customers within the service territory of the utility with which it is
affiliated. (emphasis added)

Finally, an "HVAC affiliate" is defined by the Act as "all affiliated interests of a gas utility that provide heating, ventilating, or air conditioning services to customers within the service territory of the affiliated gas utility." (Sec. 7-208. HVAC affiliate marketing)

Q. Please generally describe Nicor Gas' relationship to Nicor Inc. and its affiliates and describe some of those affiliates.

A. Nicor Gas is a wholly owned subsidiary of Nicor Inc. Nicor Gas has many affiliates; some of those affiliates provide services to Nicor Gas or offer products to Nicor Gas customers. Nicor Gas also offers services to some of those affiliates. Some affiliates that are relevant to this discussion are Nicor Services, Nicor Solutions, Nicor Advanced Energy and IBT Solutions.

Nicor Services provides warranty and repair products to Nicor Gas customers and is, therefore in my non legal opinion, an "HVAC affiliate"; Nicor Services also provides call center services to Nicor Gas.

IBT Solutions is a wholly-owned subsidiary of Nicor Services that uses its call center to serve Nicor Gas on behalf of Nicor Services.

Nicor Advanced Energy ("NAE") provides commodity gas to customers under Customer Select, Nicor Gas' small volume transportation program. Therefore, in my non legal opinion, NAE is an "affiliate in competition with the ARGS."

Nicor Solutions ("Solutions") offers a financial product to customers by paying bills for the customers and charging the customers a bill that is guaranteed to remain fixed for a year. This product does not involve the provision of any gas by

Nicor Solutions under Customer Select. Therefore, in my non legal opinion Nicor Solutions is *not* an “affiliate in competition with the ARGS.” Further details of the relationship between Nicor Gas and its affiliated interests are in Attachment A, Nicor Gas response to Staff DR DLH 11.01 Exhibit 1.

Issues/Concerns

Q. What concerns do you have with the OA as it exists currently?

A. I have two concerns with the structure of the OA as it currently exists. Specifically, I am concerned that Nicor Gas’ argument that its OA is in the public interest is too narrow and that the “umbrella-type” agreement is open to potential abuse.

1. Nicor Gas’ argument that its OA is “in the public interest” is too narrow.

Q. Where does the standard “in the public interest” come from?

A. The standard that the agreements between utilities and affiliates be determined by the Commission to be “in the public interest” is required by Section 7-101 of the Act, in particular, 220 ILCS 5/7-101(3).

Q. How does Nicor Gas explain that its OA is “in the public interest”?

A. The Company’s witness O’Connor concludes that since the services provided by each entity are provided at prices that recover the Fully Distributed Costs (“FDC”), the provision of these services is “in the public interest.” He reasons further that this is because Nicor Gas customers benefit from efficient use of resources and by a reduction in fixed costs. (Nicor Gas Ex. 1.0, pp. 5, 12)

200

201 **Q. What concerns do you have with how Nicor Gas justifies that its OA is “in**
202 **the public interest”?**

203 A. While the justification provided by Nicor Gas addresses one important component
204 of this standard, it ignores another important component. In my opinion, there are
205 two purposes for the OA. First, the OA should protect Nicor Gas customers by
206 ensuring that they are not subsidizing affiliate actions. Second, the OA should
207 prevent discrimination in favor of affiliates. Nicor Gas’ testimony only focuses on
208 the first purpose. Nicor Gas witness Mr. O’Connor only maintains a narrow focus
209 on the cost apportionment and ignores the discrimination issues.

210

211 **Q. Why does discrimination in favor of affiliates require attention in this**
212 **docket?**

213 A. Staff’s objections in the last rate case, Docket No. 08-0363, were two-fold. First,
214 Ms. Hathhorn objected to the pricing methodology used by Nicor Gas to charge
215 Nicor Services for certain services, and further objected to the lack of auditing and
216 reporting required by the OA. Second, I objected to the inequity and unfairness in
217 the customer solicitation. Nicor Gas has completely disregarded the issues of
218 discrimination and equal playing fields for competition. But, its claim that its OA is
219 “in the public interest” only addresses balancing the interests of its affiliate
220 shareholders and the interests of ratepayers (and to a lesser extent, the
221 shareholders of the local distribution company); Nicor Gas ignores its customers
222 who purchase products from Nicor Gas affiliates and the other marketers who

223 would provide competitive influence on the prices charged by affiliates to Nicor Gas
224 customers.

225

226 **Q. What harm may come from this narrow approach to determining that this**
227 **OA is in the public interest?**

228 A. Discrimination furthers the possibility that prices for products that are not checked
229 by competitive forces will be higher than they should be, resulting in inefficient
230 pricing. Thus, both customers who buy these products at *above* market prices or
231 those who would buy them at market prices are harmed.

232

233 **2. The “umbrella-type” agreement is open to abuse.**

234 **Q. What concerns do you have with the “umbrella-type” agreement?**

235 A. Because the OA is an “umbrella-type” agreement, the general agreement is
236 determined by the Commission to be in the public interest and subsequently, sub-
237 agreements are also assumed to be in the public interest provided that they fall
238 within the confines of the general agreement. The sub-agreements of the OA are
239 not subject to Commission review and approval, so the Commission could be
240 inadvertently approving affiliate interactions that are not in the public interest.

241

242 **Q. Has the Commission addressed the “umbrella-type” agreement issue**
243 **before?**

244 A. Yes. In Docket No. 02-0517, Illinois-American Water Company proposed to allow
245 an affiliate to provide a warranty product similar to GLCG; the Commission

specifically addressed its responsibilities under the Act and determined that these responsibilities were not adequately discharged under an open-ended agreement:

Section 7-101 [of the Act] obligates the Commission to review all contracts and arrangements between affiliated interests to ensure that each contract or arrangement is in the public interest....

Without knowing the details of any contemplated transactions between affiliates, the Commission would be remiss in its duties under Section 7-101 if it granted such blanket approval....

Moreover, as the Commission becomes more familiar with the types of arrangements (and abuses) that a utility and an affiliate may agree to, the Commission must be given the necessary latitude to evaluate and respond to proposed affiliate agreements. In addition, allowing the Commission to reject problematic affiliate agreements prior to their implementation will permit the Commission to conserve resources that would otherwise have to be spent on monitoring and potentially litigating arrangements under those agreements in the future.

(Order on Reopening, Docket No. 02-0517, September 16, 2003, p. 11, emphasis added)

Q. In your non legal opinion, how is Docket No. 02-0517 relevant to this case?

A. In the present case, Nicor Gas has assumed that the sub-agreements are in the public interest because they are consistent with the OA and the OA is in the public interest. However, Nicor Gas' position is contradicted by the Order on Reopening in Docket No. 02-0517. Applying the order's reasoning - that the Commission must know the details of any contemplated transactions between affiliates in order to determine if they are in the public interest - to the present case is instructive. For example, the Commission approved solicitation in the original Nicor Gas OA. However, the Commission did not know how Nicor Gas was going to solicit its customers, or that the solicitation would be, in Staff's opinion, conducted in a preferential manner to its affiliates. Section 2.2e of the OA lists as potential areas

of sharing among affiliates, “customer solicitation, customer support and other marketing related services, including without limitation, customer lists and other customer-related information...” These other categories are required by the Code to be offered in a non-preferential manner. Additionally, I do not believe that the Commission would support any solicitation that was misleading. Given the evidence of abuses provided below regarding the GLCG, it is imperative that the Commission change the OA to require approval of sub-agreements.

Q. How should the changes to the OA in this docket affect the sub-agreements already in existence?

A. I believe that sub-agreements must be in compliance with the over-arching language of the OA. Any changes to the OA which make existing agreements inconsistent with the OA will invalidate the agreements. Please see the language proposed below.

Q. What sub-agreements already in existence will become invalid?

A. Of the existing nine sub-agreements, the only agreements that would be invalidated by my recommendations would be the Moving Calls Service Agreement and amendments due to the prohibition on solicitation and the Third Party Service Request Agreement due to the prohibitions on solicitation and website hosting (see Nicor Gas responses to Staff DR DLH 2.02 Exhibits 1, 11-14, and 15).

Operating Agreement Conclusions and Recommendations

Q. What do you recommend with regard to the structure of the OA?

A. Recommendation 1: Change Nicor Gas' OA to require Commission approval of any sub-agreement *prior* to it becoming effective.

I conclude that the individual sub-agreements may contain allow interactions not in the public interest. Therefore, I recommend that the Commission change Nicor Gas' proposed OA to require Commission specific approval of any sub-agreement *prior* to it becoming effective, and I recommend that the following language be included in Nicor Gas' OA:

Section 1.2. Purpose and Intent; Interpretation. (a) The purposes and intent of this Agreement are to set forth procedures and policies to govern (i) transactions between a NICOR Entity and Nicor Gas, whether such transactions occur directly or indirectly as the end result of a series of related transactions and (ii) the allocation of certain joint service costs. It is not intended to govern transactions between NICOR Entities that do not involve Nicor Gas (although such entities may elect to apply the provisions of this Agreement to specific transactions) or to govern transactions between Nicor Gas and its subsidiaries. This Agreement shall be interpreted in accordance with such purposes and intent.

(b) The headings of Articles and Sections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. References to Articles, Sections and Exhibits refer to articles, sections and exhibits of this Agreement unless otherwise stated. Words such as "herein," "hereinafter," "hereof," "hereto," "hereby" and "hereunder," and words of like import, unless the context requires otherwise, refer to this Agreement (including the Exhibits hereto).

(c) All agreements entered into under this Agreement must first be submitted to the Commission for review and approval, except for the nine (9) agreements provided in response to Staff DR DLH 2.02 Exhibit 1 in Docket No. 09-0301. Any and all agreements must be in compliance with the Agreement. If changes to this Agreement cause any of the nine existing agreements entered under this

335 Agreement to become inconsistent, then any such agreement will
336 be considered invalid.
337

338 **V. Gas Line Comfort Guard**

339 **Description**

340 **Q. Please describe the Gas Line Comfort Guard (GLCG) product.**

341 A. The GLCG product is a *limited* warranty product provided by Nicor Services to
342 Nicor Gas customers. Nicor Gas witness O'Connor provides this description of the
343 GLCG product:

344 Gas Line Comfort Guard is a warranty product to assist
345 homeowners for repairs to gas leaks on pipes in the home interior,
346 appliance connections and shut off valves. The warranty helps to
347 cover repair costs for leaks located inside the home, which are the
348 responsibility of the home owner, as opposed to leaks on the
349 Company's side of the meter, that are solely repaired by Nicor Gas.
350 This warranty product is sold and marketed by Nicor Services, an
351 affiliate of Nicor Gas.
352 (Nicor Gas Exhibit. 1.0, pp. 12-13)

353 GLCG is an optional product that Nicor Gas customers learn about from calling the
354 call center, reading bill messages and inserts, or going online to Nicor Inc.'s
355 website.

356
357 **Q. What is the cost of the GLCG?**

358 A. The GLCG costs \$4.95 per month.²
359

360 **Q. What does GLCG cover?**

² http://www.nicorinc.com/en_us/nicor_services/protection_solutions/gas_line_faq.htm (3/7/2010)

- 361 A. The GLCG covers repairs to exposed black piping and certain valves and
362 connectors. (See Attachment B - GLCG Terms and Conditions) Nicor Services'
363 webpage lists the following explicit coverage *up to \$600 per incident*.³
- 364 • Exposed piping (black pipe ½" – 1 ¼")
 - 365 • Includes ½" and ¾" shut-off valves (leaking or inoperable)
 - 366 • Replacement of any brass connectors (leaking or not)
 - 367 • Replacement of brass connectors on hot water heater and furnace, if completely
368 accessible (replacement should be with black pipe)
 - 369 • Leaks in crawl spaces and attics on exposed pipe, if accessible

370

371 **Q. What is not covered by GLCG?**

- 372 A. GLCG will not cover repairs to unexposed piping, plastic or copper piping and
373 certain connectors or any piping that is out of code. (See Attachment B) Nicor
374 Services' webpage lists the following explicit exclusions:⁴

- 375 • Any pre-existing conditions (previous hazard tags)
- 376 • Leaks on pipe not completely exposed (example: behind walls, in ceiling)
- 377 • Damage caused by third parties, natural disasters
- 378 • Restoration to affected areas
- 379 • Fireplace valves
- 380 • B' valves

³ (http://www.nicor.com/en_us/nicor_services/protection_solutions/coverage.htm)

⁴ (http://www.nicor.com/en_us/nicor_services/protection_solutions/coverage.htm)

- Services such as connecting or disconnecting appliances
- Repairs to yard lights, grills and pool heaters
- Nothing outside the home is covered – including any appliances inside detached garages
- Mobile homes and trailers
- Facilities used for commercial purposes
- Gas meters

Furthermore, while the customer is instructed in the Terms and Conditions (Attachment B) to “Call the number stated above 24 hours a day, seven days a week to obtain service,” they are also warned that “Repairs will be performed Monday through Saturday, from 8 a.m. to 5 p.m., CDT.”

Q. Does Nicor Gas perform services on behalf of Nicor Services which enable Nicor Services to provide GLCG?

A. Yes. According to Mr. O’Connor, “Nicor Gas provides customer solicitation, billing and repair services to Nicor Services for Gas Line Comfort Guard within the Nicor Gas service territory.” (Nicor Gas Ex. 1.0, p. 13)

Q. Does Nicor Services perform services on its own behalf to provide GLCG?

A. Yes. However, Nicor Services provides only 2% of all repairs for GLCG customers (Attachment P - Nicor Gas response to Staff DR DAS 2.02), and additional solicitation through its own call center. Thus, Nicor Gas provides 98% of the GLCG related repairs on behalf of Nicor Services.

404

405 **Q, What services and costs are relevant to this discussion?**

406 A. Even if Nicor Services were able to provide evidence of other costs (other than the
407 explicit costs analyzed here), the relevant comparison is what it would cost Nicor
408 Gas to provide this same service. Billing, repairs and solicitation are the only costs
409 that Nicor Gas would incur to offer GLCG. The billing costs should be even less for
410 Nicor Gas to bill its own customers for these warranties because Nicor Gas would
411 not have to remit the funds collected from GLCG customers to Nicor Services nor
412 would it have to bill Nicor Services for the services to support GLCG.

413

414 **Q. How does the offering of GLCG compare to other OA issues where FDC is**
415 **used as the pricing methodology?**

416 A. To the best of my knowledge, the offering of GLCG, along with other warranty
417 products, is unique among the OA issues because it is the only instance where an
418 affiliate is providing a product to Nicor Gas *customers* instead of providing services
419 for Nicor Gas. For example, since NAE and Solutions face competition from both
420 Nicor Gas in Sales service under the PGA and from other gas marketers who
421 provide comparable products for customers to evaluate, these products are not part
422 of the OA discussion. In contrast, the products provided by Nicor Services are not
423 subject to competitive market forces.

424

425 **Q. How has Nicor Gas created cost advantages on behalf of its affiliate?**

426 A. Nicor Gas has extended the market power from its monopoly market for utility
427 service, which is duly regulated by the Commission, to its affiliate which is not
428 subject to any such regulation. While the Commission has limited jurisdiction to
429 regulate Nicor Services, it has complete jurisdiction over Nicor Gas and the
430 services it performs on behalf of its affiliates. It is entirely reasonable and
431 appropriate for the Commission to act here to protect the regulated customers from
432 abuse of Nicor Gas' (legitimate) market power.
433

434 **Q. Did you estimate the number of Nicor Gas customers who are Nicor**
435 **Services' customers on GLCG?**

436 A. My best estimate is that Nicor Services had more than 440,000 of Nicor Gas
437 customers taking GLCG in 2009.⁵ This is more than 20% of all Nicor Gas
438 customers. (See analysis below)
439

440 **Q. Did you estimate the frequency and average cost of covered GLCG**
441 **repairs?**

442 A. During 2009, my best estimate is that less than 2% of all GLCG customers received
443 covered repairs. The average cost of those covered repairs was less than \$76.
444 (See analysis below)
445

⁵ This is based on annual GLCG billing charges of \$883,680 (Nicor Gas response to Staff DR DAS 3.01, Exhibit 2) divided by the per-bill charge of \$0.167 (Nicor Gas response to Staff DR DAS 1.12a) divided by 12.

446 **Q. Did you estimate the net income that Nicor Services received in 2009?**

447 A. My best estimate is that Nicor Services had net income of more than \$16.5 million
448 from GLCG in 2009 and repair costs of less than \$600,000.

449

450 **Q. Why is Nicor Services able to charge such a high markup over repair**
451 **costs?**

452 A. In my opinion, Nicor Services is able to charge such a high markup because Nicor
453 Gas has created and maintained market power for Nicor Services' products.

454

455 **Issues/Concerns**

456 **Q. What are your concerns and issues with respect to GLCG?**

457 A. I have four concerns:

458 1. GLCG is marketed based on a customer's fear of having his/her gas supply
459 cut off and a false premise furthered both by Nicor Gas and its affiliate Nicor
460 Services that GLCG is required to prevent shut-offs in gas supply when leaks
461 exposed inside piping are discovered.

462 2. Nicor Gas provides resources to Nicor Services that allow it to provide a
463 service which avoids customer cutoff.

464 3. Nicor Gas facilitates access of Nicor Services to Nicor Gas customers most
465 likely to be susceptible to Nicor Services' marketing.

466 4. Nicor Gas provides services that allow Nicor Services to charge for GLCG at
467 much higher prices than Nicor Gas would be allowed to charge for the same
468 product.

469 **1. GLCG is marketed based on a customer's fear of having his/her gas**
470 **supply cut off and a false premise furthered both by Nicor Gas and its affiliate**
471 **Nicor Services that GLCG is required to prevent shut-offs in gas supply when**
472 **leaks exposed inside piping are discovered.**

473 **Q. Do Nicor Gas and Nicor Services provide misleading information to**
474 **customers regarding GLCG and overstate the benefits of the service?**

475 A. Yes. Both Nicor Gas and Nicor Services provide misleading information to
476 customers as to who actually provides this service, the current level of repair
477 services that are available from Nicor Gas, and extent of the coverage or benefits
478 under GLCG. As shown below, both Nicor Gas and Nicor Services overstate the
479 benefits from GLCG and understate the currently available repair services provided
480 by Nicor Gas. With this misinformation, in my opinion, hundreds of thousands of
481 Nicor Gas customers have been misled to believe that this service is a good choice
482 for them. This misleading information is spread via all Nicor Gas and IBT call
483 centers as well as through Nicor Inc.'s website, as discussed below.

484
485 **Q. Does Nicor Gas review and approve the scripts provided by Nicor Services**
486 **regarding GLCG?**

487 A. Yes. Nicor Services provides scripts to Nicor Gas to use in its own call centers.
488 Additionally, Nicor Services also submits its scripts to Nicor Gas for approval as
489 part of the sub-agreement to the OA. Nicor Gas is responsible for reviewing these
490 scripts for legal and regulatory compliance and for the accuracy of the information
491 in all of these scripts, which are included in the agreements.

Q. What scripts have you reviewed?

A. I have reviewed the current scripts for Nicor Gas and Nicor Services (Attachment G – Nicor Gas response to Staff DR DAS 4.03 Exhibit 1 and Confidential Attachment D – Nicor Gas’ response to Staff DR DLH 2.02 Ex.13) as well as historic scripts for each company as shown below in Figure 2. Additionally, I have reviewed flowcharts that supplemented some of the scripts to follow customer’s responses; these flowcharts sometimes provide different information than that provided in the scripts in both Attachments C and D.

Att.	Script Date	Affected Call Centers	Docket No.	Source	Remarks:
C	9/1/2005	Nicor Services	09-0301	DLH 2.02 Exhibit 11 (Conf.)	Historic Script
D	1/1/2008	Nicor Services	09-0301	DLH 2.02 Exhibit 13 (Conf.)	Current Script
E	8/11/2008	Nicor Gas	08-0363	IGS 2.35 Attachment 2	Historic Script
F	1/11/2010	Nicor Gas	09-0301	DAS 2.06 Exhibit 1	Historic Script
G	3/2/2010	Nicor Gas	09-0301	DAS 4.03 Exhibit 1	Current Script

Figure 2 - GLCG Scripts

Q. Have you reached any conclusions based on your review?

A. Yes. I have discovered that the scripts provide an inaccurate picture of GLCG and that the scripts are directed at preying on fears that the customer’s gas will be shut off if s/he has a leak and does not have GLCG. I also found it very troubling that the scripts of Nicor Gas’ call centers effectively pressure customers with threatening and manipulative claims after they indicated that they do not want to buy GLCG.

Q. Can you be more specific with respect to the threatening and manipulative

511 **claims?**

512 A. Yes. For example, when a customer states that s/he does not want GLCG
513 because s/he does not need it, using a section called “GLCG Rebuttals,” Nicor Gas
514 employees respond to the customer with:

515 I respect that—I’m often hesitant myself to buy anything over the
516 phone. Now, Mr/Ms [] what a lot of people find is that if they don’t
517 have this program in a gas leak emergency, they’ll still have to call
518 the gas company anyway. Remember, ***the utility is only legally***
519 ***responsible to make the situation safe or make repairs to its***
520 ***own facilities.*** What that means is that the property owner (such
521 as yourself) may have to find and hire an independent contractor to
522 come in, do an inspection, and then make those repairs. That can
523 be expensive, and ***it could also mean days without any gas*** to
524 heat the home, cook, and so on. Now, when you enroll in the Gas
525 Line Comfort Guard program today, ***you won’t have to worry***
526 ***about any of that: If you ever have a gas leak, all you’ll do is***
527 ***make one call to the utility, day or night, even on weekends***
528 ***and holidays.*** A certified, Nicor technician will come out, typically
529 within one hour, and make repairs up to \$600 per incident. Does
530 that sound reasonable?
531 (Attachment G - Nicor Gas response to Staff DR DAS 4.03 Exhibit
532 1, p. 1, emphasis added)

533 This is just one example of the lengths to which Nicor Gas employees are required
534 to go on behalf of their affiliate. Nicor Gas has rebuttals for five responses from its
535 customers. Nicor Gas will even pressure renters, who are not legally responsible
536 for the repairs, just in case their landlord is not responsive with repairs. (See
537 Attachment G - Nicor Gas response to Staff DR DAS 4.03 Exhibit 1, pp. 1-2)

538

539 **Q. What other concerns do you have with the solicitation process?**

540 A. Nicor Gas employees have a financial incentive to sell customers GLCG and other
541 warranty products. At the same time, Nicor Services provides financial incentives
542 to Nicor Gas employees to sell GLCG in the Nicor Gas call centers. These financial

incentives come in the form of a one-time commission payment in the month following the sale of GLCG to a customer. (Attachment H - Nicor Gas response to Staff DR DAS 1.15 Exhibit 2) As such, the financial payments create an incentive for Nicor Gas employees to pressure Nicor Gas customers into purchasing GLCG. Nicor Gas states that it achieved a 19.6% solicitation success rate from moving calls in its call centers from July 2008 to June 2009. (Nicor Gas response to AG DR AG 2.14) This success rate compares to a success rate of 2% that Nicor Services claims for solicitation by mail.⁶ Based on the “GLCG Rebuttals” scripts, the financial incentives and the high solicitation rate, it appears that Nicor Gas employees have put undue pressure on Nicor Gas customers to subscribe to GLCG.

Q. Does the information jointly provided by Nicor Gas and Nicor Services imply that Nicor Gas does not provide repair services except under GLCG?

A. Yes. For example, the statement in the script quoted above, “*the utility is only legally responsible to make the situation safe or make repairs to its own facilities,*” would give a customer the impression that Nicor Gas only provides repair services under GLCG. Nicor Services asserts that GLCG provides:

- A. No Shut off
- B. Nicor Gas tech repairs
- C. Round the clock response

⁶ <http://www.nicorinternational.com/how-we-do-it.cfm>, (3/7/2010)

D. Repairs for all repairs that are not Nicor Gas responsibility

E. No additional charge for certain repairs up to \$600 per incident

However, unbeknownst to the customer who is being solicited for GLCG, Nicor Gas already provides one-call, on-the-spot repair services as shown in the quoted company internal document below. In reality, the only benefit incrementally provided by GLCG is E above, that there will be no additional charge for certain repairs up to \$600 per incident. Nicor Gas already provides A through C as evidenced below from this Company internal document:

DETECTION AND REPAIR OF GAS LEAKS IS OF PRIMARY IMPORTANCE FROM THE STANDPOINT OF SAFETY.

When a gas leak is discovered on a customer's premise, it must be repaired or the leaking gas line or appliance disconnected or valved off.

Services Rendered

No-Charge Service

1. Search for leaks.

2. Repair leaks on Company facilities.

Charge Service

1. Permanent repair of leaks on appliances or on exposed customer piping.

2. No leak found, but a general service is performed as outlined under charge service in Supplement No. 5.

3. Restore service after leaks have been repaired by others.

(Attachment I - Nicor Gas response to Staff DR DAS 3.03 Exhibit 2)

GLCG does not cover the customers for all repairs inside the residence (D), which provides a false sense of comfort. These scripts imply that the customer gets a quick response from quality licensed technicians and that gas will not be shut off.

Misleading over statement of the coverage and benefits under the GLCG:

Q. Do the scripts overstate the benefits of the GLCG?

A. Yes. The scripts indicate that the customer is responsible for all repairs inside

the home (i.e., the customer side of the meter). It is implied that GLCG covers all these repairs. While most of the scripts mention the \$600 limit and that GLCG only covers exposed pipe, there is no mention of most of the significant exclusions listed in Attachment B.

Misleading information on who provides GLCG:

Q. Does the information jointly provided by Nicor Gas and Nicor Services include a disclaimer that the product is provided by an affiliate?

A. Yes. Nicor Gas witness O'Connor claims in his direct testimony that Nicor Gas has met the notification requirements of the Code:

If the customer is interested in these products or services, the call center representative explicitly states during the confirmation process that these products or services are provided by an affiliate of Nicor Gas, and that the customer is not required to purchase them from Nicor Services to continue receiving the same quality service from Nicor Gas. This complies with the notification requirements of 83 Illinois Administrative Code Part 550.30. (Nicor Gas Ex. 1.0, p. 12)

Q. Does Mr. O'Connor's testimony accurately reflect what takes place during these communications?

A. No, in my opinion, it does not. Based upon my review of the disclaimer information provided in the confirmation script by Nicor Gas and Nicor Services, the disclaimer is only read to a customer *after* the customer has decided to subscribe to GLCG. Mr. O'Connor seems to imply that the disclaimer is provided before the customer subscribes for the product or services. Because Nicor Gas and Nicor Services withhold this information until after the customer has decided to subscribe, the

customer is making the decision with incomplete and misleading information, despite the clear intent of Code Part 550 to provide the information beforehand to presumably enable the customers to make an informed decision.

Q. Has Nicor Services provided sufficient notification to callers at its IBT call center that they are purchasing an affiliate product?

A. No. The currently effective sub-agreement to the OA clearly states that there is supposed to be a clear transition between Nicor Gas' business and the affiliate's business. **XX
XX
XXXXXXXXXXXXXXXXXXXXX **(Confidential Attachment D - Nicor Gas response to Staff DR DLH 2.02 Exhibit 13, p. 2) **XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XX
XX
XXXXXXXXXXXXXXXXXXXXX** (Confidential Attachment D - Nicor Gas response to Staff DR DLH 2.02 Exhibit 13, p. 55)

Q. Has Nicor Gas provided sufficient notification to callers at its call centers that they are purchasing an affiliate product?

A. No. There should be a clear transition between Nicor Gas business and affiliate business. However, until just recently, that transition did not occur. The script provided on January 11, 2010 had no transition to provide clarity to the customer, relying solely on the disclaimer in the confirmation script. (Attachment F - Nicor Gas

645 response to Staff DR DAS 2.06 Exhibit 1, p. 1) A revised script provided on March
646 2, 2010 reveals that Nicor Gas has decided to include a clear notification. This
647 revised script states, “After completing any Nicor Gas procedure, it is important to
648 use the transition scripting below to begin your presentation for Nicor Services
649 products.” With this revised script (effective March 2, 2010), the customer is now
650 better advised that these products and services are offered by an affiliate company.
651 (Attachment G - Nicor Gas response to Staff DR DAS 4.03 Exhibit 1, p. 1)
652 Nevertheless, prior to March 2, 2010, Nicor Gas and Nicor Services were
653 presumably offering GLCG without this transition and for the last 11 years that
654 GLCG has been offered, the customer was most likely not being “clearly advised
655 that these products and services are offered by an affiliate company.” (See
656 Attachment G)

657
658 Misleading information provided on repair services currently available from Nicor

659 Gas:

660 **Q. Does Nicor Gas provide repair services apart from GLCG?**

661 A. Yes. Despite the fact that it is inferred to the contrary, Nicor Gas does provide leak
662 repair as “non-program” services to customers who do not have GLCG. The
663 customer is charged a “non-program fee” equal to the FDC of these repairs. (Nicor
664 Gas Exhibit 1.0, p. 13; Nicor Gas response to Staff DAS 2.17e) These repairs are
665 done in response to customer reports of suspected leaks.

666
667 **Q. How does Nicor Gas respond to suspected leaks?**

668 A. When a Nicor Gas customer suspects a natural gas leak, he/she is supposed to
669 call Nicor Gas and report the leak. Upon receiving that report, Nicor Gas
670 dispatches a Nicor Gas technician to investigate. There is no charge for this
671 service call to ensure that customers will not avoid calling to report leaks.
672

673 **Q. How does Nicor Gas respond to leaks that are on the customer's portion of**
674 **the gas system?**

675 A. If the leak is found to be on Nicor Gas' portion of the gas system (before the
676 meter), the technician will fix it. However, if the leak is found to be on the
677 customer's portion of the gas system (after the meter), the technician offers the
678 customer two choices: 1) the technician can shut off the gas and allow the
679 customer to arrange for repairs, or, 2) the technician can perform the repair on
680 the spot and charge the FDC of the repair to the customer (or if the customer is
681 on GLCG, bill Nicor Services \$72 – See Nicor Gas supplemental response to
682 Staff DR DLH 6.02 Exhibit 1). This means that when a leak is found after the
683 meter, Nicor Gas' response is the same for GLCG customers as it is for non-
684 GLCG customers.
685

686 **Q. Does the fact that Nicor Gas' scripts now provide improved notification to**
687 **callers at its call centers that they are purchasing an affiliate product mean**
688 **that this has adequately addressed the issue?**

689 A. No. According to the latest script and flowchart from IBT, Nicor Services is not
690 currently providing this same notification. Moreover, I estimate that more than

440,000 customers purchased this product presumably *after* receiving misleading information. Correcting the scripts at this point does not address the plight of existing customers, many of whom may not have purchased the product with accurate information. While correcting the misleading nature of the information may keep GLCG from expanding to new customers, it does not erode the customer and revenue base that Nicor Services has acquired over the years. Nicor Services will continue to receive a net income stream that I estimate was more than \$16.5 million in 2009.

Q. Does GLCG give around the clock service?

A. Not necessarily. Despite such implication in the scripts, the Terms and Conditions (Attachment B) do not require it. The Terms and Conditions state that “Repairs will be performed Monday through Saturday, from 8 a.m. to 5 p.m., CDT.” Therefore, the customer is not guaranteed to get the repairs done by a Nicor Gas technician and may have to wait for the stated business repairs. While this appears to only occur during 2% of the service calls for GLCG, it reduces the value of the product.

2. Nicor Gas enables Nicor Services to have market power with the GLCG product.

Q. What is market power?

A. Market power is where a provider of a good or service can have undue influence on the price charged for that good or service. Market abuse, the use of market power to achieve excessive profits, results from a monopolist being able to charge any

714 price it wants. I have seen no evidence of any other company providing this type of
715 warranty product in Nicor Gas' service territory. Nicor Gas is, of course, a
716 monopoly provider of *utility* service in its service territory. That is why its rates are
717 regulated by the ICC under the Act. GLCG and other products offered by Nicor
718 Services to Nicor Gas customers are not subject to any such regulation. GLCG
719 illustrates the shortcomings of an "umbrella-type" agreement, whereby a service to
720 an affiliate may follow the rules of the agreement but the service may not be in the
721 public interest.

722
723 **Q. Does Nicor Gas create cost advantages for Nicor Services?**

724 A. Yes. Nicor Gas creates cost advantages for Nicor Services by offering these
725 products through its affiliate and providing Nicor Services essential inputs for the
726 products. An essential input is an input necessary for all providers of a product and
727 is not easily duplicated. In the case of GLCG, the essential input is Nicor Services'
728 ability to create the misperception that GLCG prevents shutoffs or other repairs that
729 are not otherwise available. That is, it is a great advantage for Nicor Services over
730 other providers, when the Nicor Gas service person that checks for leaks without
731 additional charge to the customer is able to immediately fix the problem. By
732 feeding customers' misperception that their gas will be shut off, Nicor Services
733 ramps up demand for its product, while other providers cannot have employees on
734 site when the problem is found. These essential inputs create barriers to entry for
735 other potential suppliers because the affiliate has decidedly better access to

customers at lower cost and so can provide instant repairs that other suppliers cannot match. This creates market power for Nicor Services' GLCG product.

Q. What evidence do you have that Nicor Gas has created a position for Nicor Services with market power for warranty products?

A. There are several indications that Nicor Gas has benefited its affiliate to prevent competition. First, Nicor Gas provides Nicor Services with essential inputs. The two services that Nicor Gas provides to Nicor Services that I consider essential inputs are its repair services and, to a lesser degree, customer solicitation.

Q. Why do you consider Nicor Gas' repair services an essential input?

A. The repair services that Nicor Gas provides for Nicor Services cannot be economically duplicated⁷ by any third party wanting to provide an equivalent warranty product that the customer could expect would prevent shutoffs. Because Nicor Gas makes the vast majority of its repairs for Nicor Services when it makes a service call to check for leaking gas, the customer expects that his gas service will not be shut off as he would expect if a competitor were to provide the warranty product. Without the ability to provide repair service instantly, competitors are apparently only able to offer an inferior product. Additionally, Nicor Services enjoys a cost advantage because 50% of the transportation costs of the call are allocated

⁷ Here, 'economically duplicated' refers to 'at comparable cost and quality.'

756 to Nicor Gas, because it is also a leak response service call. Any competitor would
757 have to pay for the full transportation costs from a contracted repair service.

758
759 **Q. What prevents other sellers of insurance products from insuring repair costs**
760 **charged by the Nicor Gas employee to fix the customer's pipe?**

761 A. While other providers lack Nicor Services' marketing and billing cost advantages, I
762 believe that the major factor creating a monopoly for Nicor Services' GLCG is the
763 creation of the misperception that only GLCG can protect the customer from
764 shutoffs. Other sellers have not entered the market despite the significant markup
765 on expected repair costs charged for GLCG. It is physically impossible for other
766 insurance sellers to have a repairman on site the moment that a Nicor Gas
767 employee determines there is a leak. Other sellers also cannot point out that not
768 having GLCG does not prevent the Nicor Gas serviceman from repairing the leak.
769 If a competitor were to inform the customer that the Nicor Gas service person could
770 do the same immediate repairs for the customer on its insurance product as the
771 GLCG product, the customer would realize that neither insurance product affects
772 the avoidance of a shutoff. Rather, both products would simply cover the relatively
773 small cost of a repair. Absent the effect on shutoffs, the customer would place a
774 much lower value on the product. Thus, the only way an unaffiliated seller could
775 compete would be to devalue the customer's perception of the insurance product
776 (by pointing out its lack of necessity to avoid a shutoff). A competitor would have
777 no interest in destroying the perceived value of a product in order to compete to

provide it. Such action would destroy the product as a viable source of profits and the interest of a non affiliate in providing the product.

3. Nicor Gas facilitates access of Nicor Services to Nicor Gas customers most likely to be susceptible to Nicor Services' marketing.

Q. How does Nicor Gas solicit on behalf of Nicor Services?

[illegible]

Q. What are moving calls and how does their solicitation benefit Nicor Services?

A. Moving calls are those customers who are signing up for service at a new

⁸ Though Nicor Services' subsidiary "IBT Solutions."

799 residence. Moving calls are a lucrative market for Nicor Services. In fact,
800 information available on Nicor Services' website⁹ states that 25% of moving calls
801 respond to its marketing as opposed to 2% in billing inserts.¹⁰

802 ... Mover calls comprise, on average, 20 percent of a utility's total
803 call center volume. With specially trained representatives, we have
804 proven our ability to achieve unheard-of scale by handling service
805 calls and skillfully transitioning into product or service offerings....

807 ...We consistently achieve a 25 percent acceptance rate versus
808 two percent in a typical direct mail program. That provides the scale
809 necessary to generate significant recurring revenues and
810 earnings.¹¹

811

812 Q. How does the solicitation that occurs in moving calls benefit Nicor
813 Services?

814 **A.** After new customers are signed up for Nicor Gas utility service, Nicor Services is
815 authorized to solicit a whole host of products, including connection services.

816 According to the moving calls sub-agreement, the rates negotiated, **x x x x x x x x

817 xxxxxxxxxxxxxxxxxxxxxxxxxx** (Confidential

818 Attachment D - Nicor Gas confidential response to Staff DR DLH 2.02 Ex. 13, p. 4)

819 Nicor Services processed more than 275,000 or 59.9% of moving calls in 2009 for

820 Nicor Gas (Attachment Q - Nicor Gas response to Staff DR DAS 2.05a), and Nicor

821 Gas pays Nicor Services to do this. Nicor Gas sees this as a service to itself and

⁹ Nicor Services has assumed the name Nicor National and is doing business nationally as such (http://www.nicor.com/en_us/news_and_media/latest_releases/release_09_08_09.htm; Nicor Gas response to Staff DR DLH 8.01)

¹⁰ <http://www.nicorinternational.com/how-we-do-it.cfm> (2/2/2010)

¹¹ <http://www.nicorinternational.com/how-we-do-it.cfm> (2/2/2010)

pays Nicor Services for call center services. In 2009, Nicor Gas paid Nicor Services \$801,559 (Attachment J - Nicor Gas response to Staff DR DAS 3.01 Exhibit 4). However, Nicor Gas was not compensated for the benefit that Nicor Services receives from having a lucrative audience for its solicitation.

Q. Why do you consider customer solicitation an essential input?

A. Lacking the customer solicitation provided by Nicor Gas, competitors of Nicor Services would find it much more difficult than Nicor Services to market to potential customers. This puts these competitors at a cost disadvantage relative to Nicor Services and reduces the market forces on this market. In addition to giving Nicor Services access to the prime group of potential customers, Nicor Gas has provided explicit endorsement of Nicor Services' products. There is an *implicit* endorsement when the customer calls Nicor Gas to set up utility service and the customer service representative attempts to sell these products. However, the endorsement becomes explicit when most of these solicitations fail to identify the transition between Nicor Gas and Nicor Services; some scripts even state, **

XX

XXXXXXXXXXXXXXXX** (Confidential Attachment D, pp. 41, 43, emphasis added)

Q. What is the value of this access and endorsement?

A. The value of this endorsement has not been determined but I believe that, because Nicor Services has decided to take this utility-customer relationship and to leverage it across the nation, it must be a significant factor in these products being

845 purchased. At this time, Nicor Services pays for the *time* that Nicor Gas employees
846 solicit but not the *market value* to Nicor Services of that solicitation.

847

848 **Q. Do you have evidence that Nicor Gas is seeking to maintain Nicor Services’**
849 **position as a monopoly provider of warranty products?**

850 A. Yes. Nicor Gas has prevented or otherwise discouraged other potential
851 competitors from offering these products by refusing to provide them access to the
852 essential services of customer solicitation and repairs.

853

854 **Q. How has Nicor Gas prevented or discouraged potential competitors from**
855 **using any other services?**

856 A. In its response to Staff DR DAS 1.11, Nicor Gas states that “it does not provide
857 such billing service to non-affiliates and has no intention of providing such billing
858 services in the future.”

859

860 **Q. Is Nicor Gas willing to offer these same *essential* services to potential**
861 **competitors?**

862 A. It is unclear. In its response to Staff DR DAS 1.13 asking if it was willing to provide
863 customer solicitation and repairs services, Nicor Gas states, “that no such request
864 has been received and consequently no such determination has been made.”

865

866 **Q. Has Nicor Gas ever been approached to provide these services?**

867 A. Yes. Even though Nicor Gas provided assurances that no such requests had been
868 made, in fact, in June 2008 Progressive Energy Group (“PEG”) wrote to Nicor Gas
869 (Attachment K – Nicor Gas response to Staff DR DAS 2.14 Exhibit 1) and asked
870 them to provide information about using the Third Party Billing Service (“TPBS”), a
871 tariffed service.

872

873 **Q. How did Nicor Gas respond to these requests?**

874 A. Nicor Gas wrote back to PEG in July 2008 and provided information indicating that
875 there were actually two billing systems. The first is for commodity-related billing
876 (where the billing charges change every month) and is used by Customer Select
877 (“CS”) suppliers. It is also used by Nicor Solutions, an affiliate that provides a fixed
878 bill product. Nicor Gas quoted a price of \$.25/bill for this service, the tariffed rate.
879 The second billing system is for warranty related products (where the amount of the
880 charges does not change every month). This second system is unique and is only
881 used by Nicor Services for GLCG and its other products. Nicor Gas quoted a price
882 of \$.25/bill for this service along with a \$212,000 one-time cost to provide
883 modifications to its system. Additionally, there was an estimate of up to 28-30
884 weeks to begin service. (See Attachment L – Nicor Gas response to Staff DR DAS
885 2.14 Exhibit 3)

886

887 **Q. What other services did PEG request?**

888 A. PEG sent a follow-up request in August 2008 requesting access to solicitation
889 through Nicor Gas' call center and the website. (Attachment M – Nicor Gas
890 response to Staff DR DAS 2.14 Exhibit 6)

891

892 **Q. How did Nicor Gas respond to this additional request?**

893 A. Nicor Gas responded by letter in September 2008 and refused to provide these
894 additional services. (Attachment N – Nicor Gas response to Staff DR DAS 2.14
895 Exhibit 9)

896

897 **4. Nicor Gas provides services that allow Nicor Services to charge for GLCG**
898 **at much higher prices than Nicor Gas would be allowed to charge for the**
899 **product.**

900 The cost of providing GLCG is significantly less than the revenues that Nicor
901 Services receives:

902 **Q. How many Nicor Gas customers do you estimate are Nicor Services'**
903 **customers on GLCG?**

904 A. To estimate the minimum number of Nicor Gas customers who are on GLCG, I took
905 the total amount of billing charges that Nicor Gas billed Nicor Services for 2009 and
906 divided it by the charge per item of \$0.167. This gives the total amount of GLCG
907 bills that Nicor Services paid Nicor Gas to process. I then divided this number by
908 12 to determine the number of customers. I estimate that Nicor Services had more

than 440,000 Nicor Gas customers taking GLCG in 2009.¹² This is more than 20% of all Nicor Gas customers. (See Figure 3 below)

Estimated GLCG Customers	2007	2008	2009	Source
GLCG Billing Charges	\$443,156	\$561,418	\$883,680	DAS1.05Ex1; DAS3.01Ex2
Charge per item	\$0.096	\$0.112	\$0.167	DAS1.12a
Total Bills	4,616,210	5,012,661	\$5,291,497	(Billing Charges divided by Charge per bill)
Est. Total GLCG Customers	384,684	417,722	440,958	
Total Nicor Gas Customers	2,162,712	2,173,441	2,200,000	ICC Stats (2009 estimate)
Percentage of Nicor Gas customers on GLCG	17.8%	19.2%	20.0%	

Figure 3 - Estimated GLCG Customers

Q. What are the revenues that you estimate Nicor Gas has collected on behalf of Nicor Services?

A. Nicor Gas collected \$4.95 per month from each of Nicor Services' GLCG customers. Therefore, I estimate that Nicor Services' revenues for GLCG in 2009 were more than \$26,000,000. (See Figure 4 below)

Estimated GLCG Revenues	2007	2008	2009
Est. Total Customers ¹³	384,684	417,722	440,958
Annual Revenue per customer	\$59.40	\$59.40	\$59.40
Estimated GLCG Revenues	\$22,850,230	\$24,812,687	\$26,192,905

Figure 4 – Estimated GLCG Revenues

Q. What are the charges that Nicor Gas has billed to Nicor Services for repair services in support of GLCG?

¹² This is the GLCG billing charges of \$883,680 (Nicor Gas response to Staff DR DAS 3.01, Exhibit 2) divided by the per-bill charge of \$0.167 (Nicor Gas response to Staff DR DAS 1.12a) divided by 12.

¹³ This number is a minimum number because some customers may have more than one product and the billing charge may have been allocated to another product.

922 A. Nicor Services paid less than \$500,000 to Nicor Gas for GLCG repairs and
 923 inspections in 2009 from its customers on behalf of Nicor Services for GLCG. (Nicor
 924 Gas response to Staff DR DAS 3.01 Exhibit 2) (See Figure 5 below)

Nicor Gas charges to Nicor Services for GLCG	2007	2008	2009	Source
Repairs and Inspections	\$534,702	\$564,544	\$498,538	DAS 1.05 Ex1; DAS 3.01 Ex2
GLCG Incentives	\$109,135	\$133,864	\$112,569	DAS 1.05 Ex1; DAS 3.01 Ex2
Call Center Costs	\$101,838	\$117,953	\$113,531	DAS 1.05 Ex1; DAS 3.01 Ex2
Bill Messages	\$18,821	\$46,811	\$54,334	DAS 1.05 Ex1; DAS 3.01 Ex2
Billing Services	\$443,156	\$561,418	\$883,680	DAS 1.05 Ex1; DAS 3.01 Ex2

925 **Figure 5 – Nicor Gas charges to Nicor Services for GLCG**

926

927 **Q. What is the likelihood of covered repairs or inspections under GLCG?**

928 A. Less than 2% of customers subscribing to this product received any repair or
 929 inspections at all. (Attachment P - Nicor Gas response to Staff DR DAS 2.02)
 930 As such, in 2009, less than 8,000 of the more than 440,000 customers on GLCG
 931 received repairs or inspections that were covered by GLCG. (See Figure 6
 932 below)

933

934

Repairs and Inspections for GLCG	2007	2008	2009	Source
Nicor Gas repairs	7827	8284	7,433	DAS 3.02;DAS 2.02b
Estimated Nicor Gas % of TR	98%	98%	98%	DAS 2.02b
Nicor Services % of TR	2%	2%	2%	
Estimated Nicor Services repairs	157	166	149	
Nicor Gas inspections	453	445	199	DAS 3.02;DAS 2.02b
Estimated Nicor Gas % of TI	98%	98%	98%	DAS 2.02a
Nicor Services % of TI	2%	2%	2%	
Estimated Nicor Services inspections	9	9	4	
Estimated total inspections	462	454	203	
Estimated Nicor Services Repairs and Inspections	166	175	153	
Estimated total service calls	8,449	8,907	7,788	
Estimated % of GLCG customers who receive a benefit	2.2%	2.1%	1.7%	
Estimated Total repair and inspection costs	\$634,302	\$669,544	\$590,338	The number of Nicor Services provided repairs and inspections times the \$600 max benefit added to the repairs and inspection billing number (from Figure 5)
Average cost of these repairs	\$75.07	\$75.17	\$75.80	

Figure 6 - Repairs and Inspections for GLCG

935

936

937 **Q. Did Nicor Services' technicians perform any other repairs or inspections in**
938 **support of GLCG?**

939 A. Yes. Since Nicor Gas performs 98% of all GLCG repairs and inspections
940 (Attachment P - Nicor Gas response to Staff DR DAS 2.02), in 2009, the maximum
941 number of repairs and inspections performed by Nicor Services was 153. (See
942 Figure 6 above) The maximum cost to Nicor Services for the other repairs are
943 limited by the GLCG contract to \$600 per incident (see Attachment B). Therefore,
944 the total cost to Nicor Services and, hence, the total financial value to GLCG

customers associated with the additional 2% of repairs and inspections must be less than \$91,800 (153 x \$600). So the maximum repair and inspection costs in 2009 were less than \$600,000.

Q. What other charges did Nicor Gas bill to Nicor Services for services in support of GLCG?

A. Nicor Services paid an additional \$112,569, \$113,531, \$54,334, and \$883,680 to Nicor Gas for GLCG Incentives, Call Center Costs, Bill Messages and Billing Services in 2009, respectively. This is a total of \$1,164,114 for these other explicit costs. (See Figure 7 below)

Q. What is the final maximum estimate of explicit costs that Nicor Services incurs to provide GLCG?

A. In 2009, I estimate that Nicor Services incurred less than \$1.8 million in costs to provide GLCG. This is a cost of less than \$4.00 per GLCG customer per year. If Nicor Gas offered this product directly at cost, its price would be less for the whole year than what Nicor Services charges one customer for one month of coverage! This is the relevant comparison because it is the best measure of the incremental benefit (or harm) to customers.

Q. What effect would it have on your analysis if Nicor Services provided evidence of other costs in support of GLCG?

967 A. Even if Nicor Services was able to provide evidence of other costs, it is not
968 reasonable to believe that the costs would not materially impact my analysis. The
969 relevant comparison is the cost Nicor Gas would incur to provide this product itself.
970 According to Nicor Gas' response to AG DR 2.05, Nicor Services may incur costs
971 for:

972 product development, pricing, construct and maintain information
973 systems, develop customer terms and conditions, sales channel
974 development, post sales activities, third-party contractor
975 management, billing / remittance, credit / collection, Department of
976 Insurance and consumer protection compliance, risk profile /
977 assessment, legal and national expansion.

978 However, most of these costs are not relevant because they would not be
979 necessary if Nicor Gas were to provide GLCG to its customers apart from any
980 affiliates. It is not likely that these costs would be significant. Repairs should be the
981 primary cost of providing this warranty product.

982

983 **Q. What is your minimum estimate for net income achieved by Nicor Services**
984 **from GLCG sales?**

985 A. In 2009, I estimate that Nicor Services received net income of more than \$24
986 million from providing GLCG. After applying the 32.45% effective tax rate¹⁴ to that
987 amount, the final minimum net income from GLCG is more than \$16.6 million.

988

¹⁴ Based on Nicor Inc. 2008 10-K.

989

Estimated Net Income for GLCG	2007	2008	2009	Source
Estimated Total repair and inspection costs	\$634,302	\$669,544	\$590,338	Figure 6)
Other Costs:				
GLCG Incentives	\$109,135	\$133,864	\$112,569	DAS 1.05 Ex1; DAS 3.01 Ex2
Call Center Costs	\$101,838	\$117,953	\$113,531	DAS 1.05 Ex1; DAS 3.01 Ex2
Bill Messages	\$18,821	\$46,811	\$54,334	DAS 1.05 Ex1; DAS 3.01 Ex2
Billing Services	\$443,156	\$561,418	\$883,680	DAS 1.05 Ex1; DAS 3.01 Ex2
Total Other Costs	\$672,950	\$860,045	\$1,164,114	
Estimated Total GLCG costs	\$1,307,252	\$1,529,589	\$1,754,452	
Estimated GLCG Income (before tax profits)	\$21,542,978	\$23,283,097	\$24,438,453	
Effective Tax Rate	26.64%	27.05%	32.45%	NICOR INC 10-K 02/24/2010
Estimated GLCG Net Income (profits)	\$15,803,639	\$16,986,143	\$16,507,529	

990

Figure 7 - Estimated Net Income for GLCG

991

992 **Q. What percentage of net income are the costs of GLCG?**

993 A. In 2009, the profits of more than \$16.5 million were more than 900% of the less
994 than \$1.8 million costs. In other words, the \$4.95 per *month* fee charged to the
995 customer reflects a greater than nine-fold markup over a conservative estimate of
996 the costs needed to provide this product.

997

998 **Q. What percentage of Nicor Inc.'s total profits come from GLCG?**

999 A. In 2009, GLCG had net income of more than \$16.5 million and provided more than
1000 12% of Nicor Inc.'s net income of \$135.5 million. (Nicor Inc. 10-K, 02/25/2009) (See
1001 Figure 8 below)

1002

1003

Estimated Net Income % of corporate profits for GLCG	2007	2008	2009	Source
Estimated GLCG Net Income (profits)	\$15,803,639	\$16,986,143	\$16,507,529	
Nicor Inc Net Income	\$135,200,000	\$119,500,000	\$135,500,000	NICOR INC 10-K 02/24/2010
Nicor Gas Net Income	\$63,300,000	\$59,600,000	\$75,000,000	NICOR GAS 10-K 02/24/2010
GLCG % of Nicor Inc Net Income	12%	14%	12%	
GLCG profits as a percent of costs (markup)	1209%	1111%	941%	

1004 **Figure 8 - Estimated Net Income % of corporate profits for GLCG**

1005

1006 GLCG is not properly priced:

1007 **Q. Has the Commission previously addressed the pricing of this type of**
1008 **product?**

1009 A. Yes. In the Illinois-American Water Company ("IAWC") Docket No. 02-0517 that I
1010 discussed previously, the Commission refused to allow IAWC to have an affiliate
1011 provide the Water Line Protection Plan ("WLPP"). The Commission's primary
1012 objection was that there was no economic justification provided by the utility
1013 regarding the economic basis for the price that would be charged to utility
1014 customers that chose to participate:

1015 Just as it is troubled by the open ended nature of the amended
1016 affiliate agreement, the Commission is troubled by the lack of any
1017 analysis justifying the offering of the WLPP to Illinois rate payers.
1018 Staff, CUB, and the AG are correct in their observations that the
1019 record is void of any economic or other analysis of the WLPP. Mr.
1020 Ruckman himself admits that he does not know how often the
1021 customer-owned portion of a water line fails due to normal wear
1022 and tear. Nor is he even certain that IAWC maintains records that
1023 would answer this question. In the absence of any substantive
1024 evidence demonstrating that the WLPP is properly priced or is even
1025 legitimately necessary, it is not in the public interest to allow IAWC
1026 to lend its name and assistance in marketing the WLPP to Illinois
1027 rate payers. The Commission acknowledges that an appropriate
1028 analysis could have been done and is not available for one reason

1029 or another, but to simply accept IAWC's assertions that the WLPP
1030 is in the public interest in the face of legitimate questions raised by
1031 Staff, CUB, and the AG would be a disservice to Illinois consumers
1032 and an offense to the Commission's obligations under the Act.
1033 Accordingly, *the Commission finds that the WLPP has not been*
1034 *shown to be in the public interest and will not be approved.*
1035 (Order on Reopening, Docket No. 02-0517, September 16, 2003, p.
1036 16, emphasis added)

1037
1038 **Q. In Docket No. 02-0517, was that product currently being offered by the**
1039 **utility on behalf of its affiliate?**

1040 A. No. In Docket No. 02-0517, IAWC proposed to offer its product through an affiliate.
1041 IAWC failed to provide any economic analysis showing that the WLPP would be
1042 properly priced or legitimately necessary and the Commission found that the
1043 *warranty product* was not shown to be in the public interest and the Commission
1044 refused to approve it. That situation is distinct from the instant case because there
1045 was no data on the record for the probability of line failure or the need for repairs; in
1046 this case, there is such data.

1047
1048 **Q. Is the Commission's decision in Docket No. 02-0517 instructive with regard**
1049 **to the instant case?**

1050 A. Yes. The WLPP proposed by IAWC was the same type of warranty product as
1051 GLCG. In the instant case, there is sufficient evidence for an economic analysis as
1052 required by the Commission in Docket No. 02-0517. Applying the reasoning of that
1053 case would seem to be consistent to support a finding that GLCG is not in the
1054 public interest.

1056 **Q. Did Nicor Gas provide its own economic justification for GLCG?**

1057 A. No. In its direct testimony, Nicor Gas provided no economic justification for the
1058 price charged to its customers for GLCG. Furthermore, I requested in a data
1059 request that Nicor Gas provide such an analysis. In its response to Staff DR DAS
1060 2.08, Nicor Gas objected to my request and refused to provide such analysis. The
1061 analysis is exactly the kind of evidence that the Commission was looking for from
1062 IAWC in Docket No. 02-0517.

1063

1064 **Q. Based on the data that you have received from Nicor Gas, is GLCG**
1065 **economically justified?**

1066 A. No. GLCG has some perceived benefits to its customers. Part of this benefit is
1067 “guard” and the other part is “comfort.” The term “guard” may refer to the financial
1068 benefits of this program: the forgone repair costs. The term “comfort” may refer to
1069 the non-financial benefits: being able to budget possible expenses and the
1070 knowledge that a customer has that it will not have to worry (unless the repairs are
1071 not on exposed pipes or costs exceed \$600). Given that the annual probability
1072 occurrence of repairs is less than 2% and the average cost per repair is less than
1073 \$76 (See Figure 6 above), the “guard” is clearly not worth the annual price of
1074 \$59.40.¹⁵

1075

¹⁵ (\$4.95 monthly fee x 12 months)

I do not dismiss these very real “comfort” benefits. However, it is difficult to see how they could be worth a nine-fold markup. In other words, the fact that a customer is willing to pay \$4.95 per month is a reflection of that customer’s *perception* of the value of that product to that customer. However, ascribing such a value to GLCG, based on more than 440,000 customers choosing to purchase this product, assumes that all customers have good information. I believe that customers are buying this product (i.e., are willing to pay for it) not because they receive that much “comfort” from it, but because the value of the incremental financial and non-financial benefits are over-stated.

Q. In what other ways might customers find that GLCG gives them “comfort”?

A. “Comfort” may also be associated with a customer’s false perception carefully fostered by Nicor Gas and Nicor Services that GLCG can result in immediate repair rather than a gas shut off, a product the customer is led to believe is not otherwise available from any competitor. This perception is false because, as discussed above, Nicor Gas provides immediate repairs to customers lacking GLCG on a fee for service basis (see Attachment I).

Q. Does Nicor Gas maintain that GLCG is in the public interest because the services to provide it are provided at FDC costs?

A. Yes. Mr. O’Connor states in his testimony that “because Nicor Gas charges Nicor Services the fully distributed cost of the services provided (including a share of fixed costs), Nicor Gas is able to reduce its operating costs, which ultimately benefits

1099 ratepayers.” (Nicor Gas Ex. 1.0, p. 14) In its response to Staff DR DAS 3.07, Nicor
1100 Gas calculated that the benefit in 2009 equaled \$1,068,720. Even if the amount is
1101 accurate, it is miniscule (6%) when compared to the net revenues of \$16.5 million.
1102

1103 **Q. Should the share of fully distributed costs that are fixed in this case be**
1104 **relevant in determining a benefit to customers?**

1105 A. No. Just because these costs are fixed in the short run, all costs are variable in the
1106 long run. So, ratepayers may receive just as much benefit in the long run of
1107 reducing those assets to enable these unnecessary costs to be reduced over time.
1108 The possible benefit in reduced short run fixed costs should be compared with any
1109 harm to customers; however, the presence of these fixed costs may indicate that an
1110 asset is underutilized.
1111

1112 **Q. Would evidence from Nicor Services of significant additional costs**
1113 **showing that GLCG is indeed properly priced support a conclusion that**
1114 **GLCG is in the public interest?**

1115 A. No. If there are other costs that “justify” this price, then Nicor Services is not a very
1116 efficient provider of this product. If Nicor Services incurred overhead costs
1117 sufficient to make the pricing of this product reasonable, then it would not be in the
1118 public interest that Nicor Gas be allowed to have its employees provide service to
1119 its affiliates so that this product could be offered by that affiliate for \$4.95 per month
1120 when it could be provided at cost by Nicor Gas for less than \$0.35 per month.
1121

1122 **GLCG Conclusions and Recommendations**

1123 **Q. What do you conclude and recommend with regard to GLCG?**

1124 A. I conclude that Nicor Gas and Nicor Services mislead customers into wrongly
1125 thinking that GLCG is necessary to prevent customers from being shutoff as a
1126 result of failures in exposed piping. The use of Nicor Gas' service personnel to
1127 investigate leaks and to simultaneously provide repairs allows Nicor Services to
1128 ensure the customer repair is done without shutoff. The agreement to allow Nicor
1129 Services the right to market to Nicor Gas' new customers gives Nicor Services
1130 access to customers especially susceptible to inside piping failure concerns. Nicor
1131 Gas provided resources allow Nicor Services to provide GLCG at much higher
1132 prices than Nicor Gas would be allowed to charge for the product. Nicor Gas
1133 provided resources also give Nicor Services market power in providing the GLCG
1134 product. Because of all of the above, it is not in the public interest for Nicor Gas to
1135 provide the resources to allow Nicor Services to offer GLCG, and Nicor Gas should
1136 be precluded from doing so. Therefore, I make the following four
1137 recommendations:

1138 **Recommendation 2: Change Nicor Gas' OA to preclude customer solicitation.**

1139 Because Nicor Gas has taken advantage of its status as a monopoly provider of
1140 utility service and extended that market power unjustly to its affiliate, which has
1141 allowed its holding company to reap profits through that affiliate, it should be
1142 precluded from any customer solicitation on behalf of *any* affiliate. GLCG illustrates
1143 the damage that allowing solicitation can cause. Therefore, I recommend that the
1144 Commission order Nicor Gas to change its OA to remove customer solicitation from

the services which Nicor Gas can provide for an affiliate. This must preclude both the solicitation by Nicor Gas on behalf of any affiliate as well as any solicitation of Nicor Gas customers by an affiliate as a result of providing a service for Nicor Gas. The effect of this recommendation on Nicor Services' GLCG would be that Nicor Gas could not solicit for it. Nicor Services would have to solicit on its own. However, my recommendation would not prevent Nicor Services from continuing to offer this product. I would note that my modifications to the OA do not reflect any modifications to the OA that Staff witness Hathhorn may have recommended in her testimony. Accordingly, I recommend the following language changes to the OA:

Section 2.2. Services. Upon the terms and subject to the conditions of this Agreement, a Requestor may request a Provider or Providers to provide, and, subject to the provisos at the end of this Section, such Provider or Providers may provide to such Requestor:

.....

~~(e) customer solicitation~~, customer support and other marketing-related services, including, without limitation, customer lists and other customer-related information; provided, however, that a Provider shall have no obligation to provide any of the foregoing, considering such factors as the extent that it is not capable of providing such service (either because such Provider does not have personnel capable of providing the requested service or the service is otherwise being used); and provided further, it is understood that a Provider has sole discretion in scheduling the use by a Requestor of services so as to avoid interference with such Provider's operations.

(f) Nicor Gas is specifically precluded from providing customer solicitation on behalf of any affiliate. Furthermore, Nicor Gas is prohibited from receiving any service from an affiliate that results in that affiliate soliciting Nicor Gas customers for an affiliate product.

Recommendation 3: Require Nicor Gas to provide factual information regarding its currently available repair services.

If the Commission decides to continue to allow Nicor Gas to provide inspections and repairs in support of Nicor Services' GLCG and other warranty products, the services provided in support by Nicor Gas should only be allowed if Nicor Gas agrees to distribute a fact sheet approved by Staff informing all customers of the following:

- repair frequency percentage,
- average cost of repairs,
- expected cost per year of repairs per customer,
- that the repair service is currently available from Nicor Gas technicians at the cost of the service,
- that GLCG and other similar warranty products are not offered by their utility, but by the utility's affiliate, and
- that they may cancel GLCG at any time.

Nicor Gas should provide drafts to the Director of the Energy Division within 30 days of the final order in this proceeding. Fact sheets should be distributed within 60 days and provided to the Commission with a copy to the Director of the Energy Division.

In addition, since it is the policy of Nicor Gas to provide repairs upon detecting a leak, customers should be informed of this policy in conjunction with safety information advising customers to call Nicor Gas when they smell gas.

Recommendation 4: Change Nicor Gas' OA to preclude operational services other than those specifically authorized.

1201 The GLCG illustrates the damages that can occur when a utility is allowed to
1202 provide open ended operational services to its affiliates. The proposed change I
1203 recommend will limit the scope of such services to a reasonable level. It is my
1204 understanding that Nicor Gas performs these repairs and inspections under the
1205 section termed "other operational services." The change would preclude Nicor Gas
1206 from providing inspections and repairs in support of Nicor Services' GLCG. Nicor
1207 Gas should continue to provide repair services as it promotes safety and is a
1208 beneficial service in the public interest. Revenues should continue to be treated as
1209 above the line revenue. The impact of this Recommendation is that GLCG could
1210 not be offered in its current form. Nicor Gas could not bill Nicor Services for the
1211 leak repair. The customer would have to be billed. Nicor Services might be able to
1212 offer a modified service that reimbursed the customer for the Nicor Gas repair
1213 charge. However, customer misperception that GLCG prevents shutoffs when
1214 leaks occur, not the customer's purchase of the GLCG product, would be reduced
1215 or eliminated. This realization would likely lower the perceived value of GLCG to
1216 the customer. Whether the GLCG product would remain viable is open to question.
1217 Accordingly, I recommend the following language changes to the OA:

1218
1219 Section 2.2. Services. Upon the terms and subject to the
1220 conditions of this Agreement, a Requestor may request a Provider
1221 or Providers to provide, and, subject to the provisos at the end of
1222 this Section, such Provider or Providers may provide to such
1223 Requestor:

1224

1225 (d) operational services, including, without limitation, drafting and
1226 technical specification development and evaluation; consulting;
1227 engineering; environmental; construction; design; resource
1228 planning; economic and strategic analysis; research; testing;

1229 training; public and governmental relations; and ~~other operational~~
 1230 ~~services;~~ and
 1231

1232 **Recommendation 5: Change Nicor Gas' OA to require that *any* Nicor Gas**
 1233 **service, excluding "corporate support,"¹⁶ that supports *any* affiliate product**
 1234 **that is offered to Nicor Gas customers be provided to non-affiliates on a non-**
 1235 **discriminatory basis.**

1236 The GLCG product illustrates the damage that can be done by allowing non-utility
 1237 affiliates access to utility assets in order to leverage the utility's position in selling to
 1238 the utility's customers. This Recommendation is offered if Recommendation 2 or
 1239 Recommendation 4 is rejected and the Commission continues to allow Nicor Gas to
 1240 provide services to and/or solicit for affiliates providing products to Nicor Gas
 1241 customers like GLCG. It would provide that Nicor Gas be required to provide all
 1242 such services to non-affiliates at the same rate and without any discrimination. The
 1243 effect of this recommendation would be to limit a non-utility affiliate's leveraging of
 1244 the utility's monopoly position in unregulated markets by requiring utilities to offer
 1245 services non-affiliates on a non-discriminatory basis. This recommendation would

¹⁶ "Corporate support" means corporate oversight and governance involving administrative services (including travel administration, security, printing, graphics, custodial services, secretarial support, mail services, and records management), financial management services (including accounting, treasury, internal audit, tax, and financial reporting and planning), data processing, shareholder services, human resources, employee benefits, regulatory affairs, legal services, lobbying, and non-marketing research and development activities. Corporate support also includes strategic planning. (TITLE 83: PUBLIC UTILITIES, CHAPTER I: ILLINOIS COMMERCE COMMISSION, SUBCHAPTER d: GAS UTILITIES, PART 550 NON-DISCRIMINATION IN AFFILIATE TRANSACTIONS FOR GAS UTILITIES, Section 550.10 Definitions)

1246 allow other sellers to market a GLCG-type product. Accordingly, I recommend the
1247 following language changes to the OA:

1248

1249 **Section 2.2. Services.** Upon the terms and subject to the
1250 conditions of this Agreement, a Requestor may request a Provider
1251 or Providers to provide, and, subject to the provisos at the end of
1252 this Section, such Provider or Providers may provide to such
1253 Requestor so long as any service, excluding “corporate support,”
1254 provided by Nicor Gas that supports any affiliate product offered to
1255 Nicor Gas customers be also provided to non-affiliates on a non-
1256 discriminatory basis:
1257

1258 **VI. Other Nicor Affiliate Products**

1259 **Description**

1260 **Q. Please describe Nicor Services’ other warranty products.**

1261 A. Nicor Services offers several other warranty products that *may* be priced in a
1262 similar manner. These include the ELCG and HVAC warranties. They also are
1263 authorized by Nicor Gas to solicit customers for purchase of many products under
1264 what are loosely termed “connection services.”

1265

1266 **Q. Does Nicor Gas perform repairs on these other warranty products?**

1267 A. No. According to Nicor Gas’ response to Staff DR DAS 2.17, Nicor Gas performs
1268 no repairs on these other products.

1269

1270 **Q. What services does Nicor Gas perform for these other warranty products?**

1271 A. Nicor Gas still performs solicitation and billing services in support of these other
1272 products.

[illegible]

¹⁸ This cost also includes repairs for GLCG customers outside Nicor Gas territory.

1292 **Affiliate Products Conclusions and Recommendations**

1293 **Q. What do you conclude with regard to other products offered by Nicor Gas**
1294 **affiliates?**

1295 A. I conclude that none of Nicor Services' products have been shown to be in the
1296 public interest or even properly priced. Because Nicor Gas has not provided any
1297 economic justification for these other products, I cannot determine that the
1298 customers being offered them are not being over-charged. Recommendation 2
1299 offered above would preclude solicitation of GLCG and these other products.
1300 Recommendation 5 would require Nicor Gas to offer any services that support an
1301 affiliate's products that are offered in the Nicor Gas service territory to any
1302 interested third party that is not an affiliate in a non-discriminatory manner.

1303

1304 **VII. Call Centers**
1305 **Description**

1306 **Q. Please describe call centers used by Nicor Gas.**

1307 A. According to its response to Staff DR DAS 1.15 Exhibit 2 (Attachment H), Nicor
1308 Gas has two call centers in Sycamore and Bloomington. Nicor Services has one
1309 call center in Geneva provided by IBT Solutions (IBT), which is a wholly owned
1310 subsidiary of Nicor Services (Docket No. 08-0363, Nicor Gas response to Staff DR
1311 DLH 2.09). So, the call center services that Nicor Services provides to Nicor Gas
1312 are provided by IBT.

1313

1314 **Issues/Concerns**

1315 **Q. What issues and concerns do you have with regard to call centers used by**
1316 **Nicor Gas?**

1317 **A.** I have two concerns with regard to these call centers.

1318

1319 **1. The reduction in short run fixed costs is less than the damage caused by**
1320 **the outcome of this service.**

1321 **Q. Does Nicor Gas maintain that using its call centers to solicit and provide**
1322 **call center services to Nicor Services is in the public interest because the**
1323 **services are provided at FDC costs?**

1324 **A.** Yes. Mr. O'Connor states in his testimony that "ratepayers benefit from the
1325 reduction in costs of operating the call center. Because Nicor Gas charges Nicor
1326 Services all costs related to providing this service (including a share of its fixed
1327 costs), the net cost to the utility, and ultimately to the ratepayer, is reduced." (Nicor
1328 Gas Ex. 1.0, p. 12) Nicor Gas provided the level of this benefit in its response to
1329 Staff DR DAS 3.06; the calculated benefit in 2009 was \$50,370. Even if the
1330 amount is accurate, it is only a negligible percentage (0.5%) of the GLCG net
1331 income of \$ \$16.5 million.

1332

1333 **2. Nicor Services is willing to provide call center services below FDC**
1334 **because of the market value of the implied solicitation.**

1335 **Q. What solicitation is provided in Nicor Gas and Nicor Services call centers?**

1336 A. Nicor Gas solicits its regulated utility customers in two ways. First, Nicor Gas
1337 employees solicit through the two Nicor Gas call centers. This explicit solicitation is
1338 recognized by Nicor Gas and paid for by Nicor Services on a per call basis. Nicor
1339 Services pays for the *time* that Nicor Gas employees solicit but not the *market*
1340 *value* to Nicor Services of that solicitation.
1341 A second solicitation results from Nicor Gas' contract with Nicor Services¹⁹ to
1342 process "moving calls." Nicor Gas sees this processing as a "call center service" to
1343 itself and pays Nicor Services for these services. However, Nicor Gas is not
1344 compensated for the benefit that Nicor Services receives from having a lucrative
1345 audience for its solicitation.

1346

1347 **Q. What does Nicor Gas pay Nicor Services to provide call center services?**

1348 A. Nicor Gas pays Nicor Services (IBT) \$2.82 per call for call center services. The
1349 FDC is \$3.02 per call. (Docket No. 08-0363, Nicor Gas response to Staff DR DLH
1350 2.09) While Nicor Services is paying Nicor Gas this below-FDC rate, Nicor
1351 Services does not pay Nicor Gas anything for the right to solicit Nicor Gas'
1352 customers. In my view, this is an extremely valuable service.

1353

1354 **Q. What benefit do Nicor Gas customers get from this arrangement?**

1355 A. The only advantage that Nicor Gas customers get from this deal is that they pay
1356 \$0.20 below Nicor Services' FDC for this service. (Docket No. 08-0363, Nicor Gas

¹⁹ Though Nicor Services' subsidiary "IBT Solutions."

1357 response to Staff DR DLH 2.09) This saves about \$60,000²⁰ annually for Nicor
1358 Gas customers who would otherwise pay FDC for this service. However, since I
1359 estimate GLCG profits exceeded \$15.9 million in 2009 as shown above, it should
1360 not be surprising that Nicor Services is willing to provide these services at below
1361 FDC.

1362
1363 **Q. What was the original offer from IBT to provide these services?**

1364 A. When Nicor Services initially approached Nicor Gas in 2005 and won the bid for
1365 these services, Nicor Services offered \$0.95 per call rate. (Docket No. 08-0363,
1366 Nicor Gas response to Staff DR DLH 2.09) Nicor Services' FDC to provide these
1367 services is \$3.02 according to a cost study provided in 2007 when Nicor Services
1368 sought to renegotiate its rate with Nicor Gas. Nicor Services' offering to provide
1369 Nicor Gas the service for \$0.95 with an FDC of \$3.02 suggests that it was receiving
1370 a benefit of at least \$2.07 per call for the ability to solicit these customers. If one
1371 makes the reasonable assumption that IBT was not offering to do this service
1372 (which includes a right to solicit) at a loss, Nicor Services gave up at least two
1373 dollars per call to its affiliate.

1374
1375 **Call Center Conclusions and Recommendations**

1376 **Q. What do you conclude with regard to Nicor Gas' call centers?**

²⁰ \$0.20 times an estimated 300,000 calls for 2009. (Attachment Q - Nicor Gas response to Staff DR DAS 2.05a)

1377 A. I believe that it is impossible for the ICC to effectively monitor the IBT Call Center,
1378 and Nicor Gas may not be adequately separated from Nicor Services.
1379 Recommendations 2 and 5 would preclude t Nicor Gas from providing *any* “call
1380 center services” to its affiliates. However, if the Commission decides to continue to
1381 allow affiliates to provide call center services for Nicor Gas, it should not allow these
1382 affiliates to solicit for any products not provided by Nicor Gas.

1383

1384 **VIII. Website**

1385 **Description**

1386 **Q. Please describe Nicor Inc.’s Website.**

1387 A. Nicor Inc. hosts a website²¹ for use by some of its affiliates including Nicor Gas and
1388 Nicor Services.

1389

1390 **Q. Please describe Nicor Gas’ webpage.**

1391 A. Nicor Gas does not have its own independent website; it has a webpage on the site
1392 hosted by Nicor Inc. (Nicor Gas Exhibit 1.0, p. 10) The web address given to
1393 customers in their monthly bill is [www.nicorgas.com/my account](http://www.nicorgas.com/myaccount). This link takes
1394 the customer to Nicor Gas’ webpage on Nicor Inc.’s website.

1395

²¹According to Merriam-Webster.com a web site: is “a group of World Wide Web pages usually containing hyperlinks to each other and made available online by an individual, company, educational institution, government, or organization.” “website.” Merriam-Webster Online Dictionary. 2010. Merriam-Webster Online. <http://www.merriam-webster.com/dictionary/website> (2/10/10)

1396 **Issues/Concerns**

1397 **Q What are your issues and concerns with regard to the website?**

1398 A I have the following concerns:

1399 1. Customers are unaware when they shift between Nicor Gas' web pages and
1400 an affiliate's web pages.

1401 2. The disclaimers on the bottom of the page are insufficient protection for
1402 customers using Nicor Inc.'s website.

1403 3. Nicor Inc. is unwilling to provide potential competitors access to its website
1404 for solicitation.

1405

1406 **1. Customers are unaware when they shift between Nicor Gas' web pages**
1407 **and an affiliate's web pages.**

1408 **Q. Do Nicor Gas affiliates solicit through the Nicor website?**

1409 A. Yes. Many Nicor affiliates are linked on this site and have their products advertised
1410 and/or solicited on the website.

1411

1412 **Q. Is it obvious or detectable when Nicor Gas customers shift from a Nicor**
1413 **Gas webpage to an affiliates' webpage?**

1414 A. No. There is no way for customers to know that they are shifting away from the
1415 Nicor Gas webpage and that the products are not regulated by the ICC. This is
1416 important because customers are going to this site because they have to buy gas
1417 delivery service from the gas utility, Nicor Gas. The website therefore serves a
1418 utility function.

1419

1420 **Q. Does Nicor Gas allow customers to sign up for regulated utility service**
1421 **online?**

1422 A. Yes.

1423

1424 **Q. Does Nicor Services solicit new customers for GLCG during the startup**
1425 **process?**

1426 A. Yes. Nicor Gas customers are solicited via Nicor Inc.'s website during the start
1427 service process. Customers initiating utility service online are solicited for GLCG.

1428

1429 **Q. How does this solicitation occur?**

1430 A. Customers who go to the initial Nicor Gas webpage find a link for "Moving in or out."
1431 When they click it, they are transferred to another page on the Nicor Inc. webpage
1432 where they select "Start Gas Service." They are transferred to another page where
1433 they are required to provide their customer information. At the bottom of that page,
1434 they are solicited for GLCG. So the solicitation of Nicor Gas' new customers occurs
1435 on a Nicor Inc. webpage rather than on the Nicor Gas webpage. There is no
1436 legitimate reason for this signup process to shift to a Nicor Inc. page.

1437

1438 **Q. Is there any disclaimer to let customers know when they are shifting**
1439 **between Nicor Gas and Nicor Inc. or affiliate webpages?**

1440 A. No. However, some of the affiliate pages have a disclaimer in a much smaller print
1441 at the bottom of the page and is, therefore, less visible and apparent.

1442

1443 **2. The disclaimers on the bottom of the page are insufficient protection for**
1444 **customers using Nicor Inc.'s website.**

1445 **Q. Is there a reason why Nicor Inc. would have these disclaimers?**

1446 A. Yes. Because Nicor Services is an HVAC affiliate, these disclaimers are required
1447 by law. (220 ILCS 5/7 208, HVAC affiliate marketing) While there does not appear
1448 to be a violation of the law in this case, it does appear that the disclaimers are only
1449 meeting the letter, and not the spirit, of the law.

1450

1451 **Q. Is the information as presented by Nicor Inc. on these pages misleading?**

1452 A. The information provided by Nicor Inc. through its website is misleading as to which
1453 services are provided by the regulated utility, Nicor Gas, and which services are
1454 provided by an affiliate. They are downplaying the nature of the relationship
1455 between the affiliate and Nicor Gas by displaying this information in fine print at the
1456 bottom of the page. Customers who look at these web pages are not likely to notice
1457 these disclaimers until after they have absorbed the other information on the page.
1458 This may result in an incomplete or inaccurate understanding of which products are
1459 being offered by the utility and which ones are being offered by an affiliate.

1460

1461 **3. Nicor Inc. is unwilling to provide potential competitors access to its**
1462 **website for solicitation.**

1463 **Q. Has Nicor Gas been requested to provide equal solicitation rights to**
1464 **potential marketers?**

1465 A. Yes. PEG asked to use the website to solicit for warranty product and services in
1466 the same manner as Nicor Services does (Attachment M – Nicor Gas response to
1467 Staff DR DAS 2.14 Exhibit 6) and the company flatly refused (Attachment N – Nicor
1468 Gas response to Staff DR DAS 2.14 Exhibit 9).

1469

1470 **Q. What does Nicor Gas state regarding equal solicitation rights to unaffiliated**
1471 **marketers?**

1472 A. Nicor Gas responded to Staff DR DAS 1.13 regarding willingness to provide
1473 solicitation. It claimed that no determination had been made concerning the issue
1474 because no one had requested it. This is clearly contradicted by Nicor Gas in its
1475 response to Staff DR DAS 2.14 (Attachment M), where such a request was made
1476 to the Company. Therefore, it appears that it is Nicor Gas' position that it is not
1477 obligated to, and has refused to, provide such services to non-affiliates.

1478

1479 **Website Conclusions and Recommendations**

1480 **Q. What do you conclude with regard to Nicor Inc.'s Website?**

1481 A. Nicor Gas should be precluded from using Nicor Inc.'s website to host a Nicor Gas
1482 webpage. Recommendation 2 discussed above would preclude this. Because the
1483 affiliates and their products are also featured in this site, it creates fairness issues
1484 for any potential competitors and fosters confusion among Nicor Gas customers.
1485 Regardless of the Commission's decision regarding solicitation above, solicitation
1486 through the website is a bad idea. If it is allowed, Nicor Services should pay Nicor
1487 Gas for the market value of this solicitation and it should be provided to non-

affiliates in a nondiscriminatory basis, as required by Recommendation 5. Because the products offered by third-parties (including affiliates) may not be “properly priced,” it is imperative for clear disclaimers that require an affirmative customer response to be used whenever the customer goes to a third-party site (including affiliate) or to Nicor Inc.’s site. Therefore, I have the following recommendation and recommend the following language changes to the OA:

Recommendation 6: Change Nicor Gas’ OA to preclude website hosting of Nicor Gas by any affiliate.

Section 2.2. Services. Upon the terms and subject to the conditions of this Agreement, a Requestor may request a Provider or Providers to provide, and, subject to the provisos at the end of this Section, such Provider or Providers may provide to such Requestor:

(a) administrative and management services, including, without limitation, accounting (including, without limitation, bookkeeping, budgeting, forecasting, billing, accounts receivable and accounts payable administration, and financial reporting); audit; executive; finance; cash management (including, without limitation, electronic fund transfers, cash receipts processing, managing short-term borrowings and investments with third parties, and short-term borrowing and investing between Parties to this Agreement subject to the limitations and at the interest rates specified in the Addendum to this Agreement); governmental affairs; insurance; information systems services excluding website hosting of Nicor Gas by any affiliate; investment advisory services; legal; library; record keeping; secretarial and other general office support; real estate management; security holder services; tax; treasury; and other administrative and management services;

IX. Billing Services

Description

Q. Please describe Nicor Gas’ Third Party Billing Service (“TPBS”).

1521 A. Nicor Gas has a billing service called TPBS. It provides this service as required
1522 by law under its ICC tariff:

1523 Any third party desiring to have the Company to include its charges
1524 to the customer on the Company's bill shall enter into the
1525 Company's standard contract that stipulates the procedures to be
1526 followed. The Company will provide up to six (6) standard lines of
1527 text that may be used by the third party. The Company will process
1528 customer payments in a timely manner and will electronically
1529 forward payments to the third party's bank account and notify the
1530 third party of the customer's payment on a daily basis. The fee for
1531 billing and payment processing will be \$0.25 per bill. If the third
1532 party would like additional services with respect to billing, the
1533 Company and third party will negotiate in good faith the fees for
1534 such additional services. The Company will report these additional
1535 services and fees to the Illinois Commerce Commission as
1536 assurance that any such additional services and fees are being
1537 offered on a non-discriminatory basis.
1538 (Ill.C.C. No. 16 – Gas, 5th Revised Sheet No. 52.5 Third Party
1539 Billing Service)

1540

1541 **Q. Please describe Nicor Gas' billing systems.**

1542 A. Nicor Gas has two billing systems. The first is used to support ARGS that sell gas
1543 under Customer Select ("CS") and large volume transportation customers and is
1544 described as a system as follows: "The CSel billing program was originally
1545 designed for multiple users (suppliers), therefore, additional suppliers can easily be
1546 added to that IT system." (Attachment L - Nicor Gas response to Staff DR DAS
1547 2.14 Exhibit 3) It is subject to the tariff rate of \$.025 per bill. According to Nicor
1548 Gas, the second billing system was designed for use by only one provider, and for
1549 any additional user to use that system, significant modifications would have to be
1550 made. (Attachment L - Nicor Gas response to Staff DR DAS 2.14 Exhibit 3) Nicor
1551 Gas' position on this issue is reflected in the following statement: "The Company's

1552 other third party billing system for Nicor Services' warranty products is a different
1553 system and it was not designed for multiple users, and therefore, substantial
1554 modifications would be required to add another supplier. The time to do the coding,
1555 configuration and testing would take approximately 28-30 weeks."(Attachment L -
1556 Nicor Gas response to Staff DR DAS 2.14 Exhibit 3) This second system is not
1557 subject to the TPBS tariff and Nicor Services was charged \$0.112 per bill in 2008.
1558 (Attachment O - Nicor Gas response to Staff DR DAS 1.12)

1559

1560 **Issues/Concerns**

1561 **Q What are your issues and concerns with regard to Nicor Gas' billing**
1562 **services?**

1563 A I have two specific concerns.

1564

1565 **1. Nicor Gas' offer to PEG was discriminatory.**

1566 **Q. Did Nicor Gas offer to let a potential competitor use the billing system**
1567 **designed for Nicor Services?**

1568 A. Yes. In its response to Staff DR DAS 2.14 Exhibit 3 (Attachment L), Nicor Gas
1569 revealed that it was willing to provide access to the same billing system used for
1570 Nicor Services.

1571

1572 **Q. Was this offer discriminatory?**

1573 A. Yes. While the rate charged to Nicor Services at that time was \$0.112 per item,
1574 Nicor Gas told PEG that it would have to pay \$0.25 per bill to use the same billing

1575 service (in addition to a fee to modify the system and significant delay). This
1576 discriminatory offer would have made it more expensive for PEG to offer
1577 competitive products and protected Nicor Services from competition from PEG.

1578

1579 **Q. Can Nicor Gas provide billing services to its affiliate that are not subject**
1580 **the tariff?**

1581 A. No. In my opinion, *if* the service provided to Nicor Services is different from that
1582 provided for the CS suppliers, this service constitutes an “additional service with
1583 respect to billing” and must be offered in a non-discriminatory manner and be
1584 brought before the Commission. Here, evidence has been provided that this
1585 identical service was offered in a discriminatory manner to PEG.

1586

1587 **2. TPBS is broad enough to cover both Nicor Gas billing systems.**

1588 **Q. How did Nicor Gas present its billing systems in Docket No. 08-0363?**

1589 A. Nicor Gas witness Gorenz filed surrebuttal testimony on November 5, 2008²², that
1590 stated,

1591 Nicor Gas does not provide a billing service for any third party that
1592 is at all similar to the billing service it provides for Nicor Services’
1593 HVAC business. There simply is not a prevailing price for the billing
1594 service rendered to Nicor Services. As such, the Operating
1595 Agreement dictates that Nicor Services should be charged at least
1596 the Company’s fully distributed cost.
1597 (Nicor Gas Exhibit. 45.0, Docket No. 08-0363, p. 10)

²² This testimony was filed *after* Nicor Gas made its offer to PEG on July 20, 2008.

1598

1599 Nicor Gas argued in its initial brief that “the evidence demonstrates that the billing
1600 service offered to Nicor Services is not “provided for sale to the general public” by
1601 Nicor Gas and as such, use of a fully distributed cost charge is appropriate.” (Nicor
1602 Gas Initial Brief, Docket No. 08-0363, p. 131)

1603

1604 **Q. How was this issue treated by the Commission in Docket No. 08-0363?**

1605 A. Staff had proposed an adjustment of \$500,000 to reflect a higher price for this
1606 service. The Commission rejected it because Nicor Gas maintained that it had
1607 never offered this service to any other party. The Commission concluded that the
1608 services were sufficiently different to allow the use of FDC instead of using the
1609 TPBS tariff rate of \$0.25 per bill as the prevailing price:

1610 The Commission accepts the Company's argument and finds that it
1611 has properly charged the fully distributed cost of the billing service
1612 that it provides Nicor Energy Services. The billing service offered to
1613 Nicor Energy Services is different from the service offered to Nicor
1614 Solutions. *The Company also does not offer to any other party the*
1615 *billing service provided to Nicor Energy Services.* Further, under the
1616 present terms of the Company's Operating Agreement, use of a
1617 fully distributed charge is appropriate where the Company does not
1618 offer a service for sale to the general public. The Commission
1619 accepts the Company's calculation of test year revenues related to
1620 Nicor Energy Services billing service.
1621 (Order, Docket No. 08-0363, March 25, 2009, pp. 179-180,
1622 emphasis added)

1623

1624 The Commission made its determination without knowledge of the offer to provide
1625 similar services to PEG at more than twice the price. The Commission relied on
1626 the assertion by the Company that it did not offer this service to any other party.

1627

1628 **Q. Was this assertion accurate?**

1629 A. No. It is clear that Nicor Gas did offer this exact same service publicly to PEG
1630 during its prior rate case.

1631

1632 **Q. How does Nicor Gas define the prevailing price?**

1633 A. According to Mr. O'Connor, the prevailing price is that "for which the facility or
1634 service is provided for sale to the general public by the Provider (i.e., the tariffed
1635 rate or other pricing mechanism approved by the ICC)." (Nicor Gas Ex. 1.1, p.7,
1636 emphasis added)

1637

1638 **Q. Has the Commission approved this pricing mechanism?**

1639 A. Yes. This is either the tariffed rate of \$0.25 per bill or it is an "other pricing
1640 mechanism approved by the Commission." In the tariff for the TPBS, the
1641 Commission has approved that "additional services with respect to billing" can
1642 provided but must be reported *in order to prevent discrimination*.²³

1643

1644 **Q. How does the Commission's decision in this docket about the definition of**

²³ "If the third party would like *additional services with respect to billing*, the Company and third party will negotiate in good faith the fees for such additional services. The Company will report these additional services and fees to the Illinois Commerce Commission as assurance that any such additional services and fees are being offered on a non-discriminatory basis." (Ill.C.C. No. 16 – Gas, 5th Revised Sheet No. 52.5 Third Party Billing Service, emphasis added)

1645 **the prevailing price affect this issue?**

1646 A. If the Commission accepts Staff witness Hathhorn's proposed language that
1647 redefines the prevailing price (Staff Ex. 1.0, pp. 3-4), it is clear that this product
1648 would have to be charged the price quoted to PEG.

1649

1650 **Billing Services Conclusions and Recommendations**

1651 **Q. What do you conclude with regard to TPBS?**

1652 A. **Recommendation 7: Require Nicor Gas to charge any affiliate the same**
1653 **charge as other third parties under the Third Party Billing Service.**

1654 Both billing systems should be subject to tariff under the Third Party Billing Service.

1655 Regardless, the system that is used by Nicor Services was publicly offered to PEG
1656 and therefore, the appropriate price to be charged is the price offered to PEG.

1657 Given that Nicor Gas offered to allow PEG to use the same billing system at a rate

1658 more than twice what Nicor Services was charged, the Commission should take a

1659 second look at this billing discrepancy and find that Nicor Gas must charge its

1660 affiliate the same price it quoted to a potential competitor. Therefore, I recommend

1661 that the Commission order Nicor Gas to charge Nicor Services \$.25 per call in

1662 keeping with the price offered to the public represented by PEG. This price is

1663 appropriate when considered with the language change to prevailing price that Staff

1664 advocates in this case. Further, Nicor Gas should provide documentation to verify

1665 that the price change ordered by the Commission was implemented.

1666

1667 **Q. Does this conclude your prepared direct testimony?**

1668 A. Yes.